IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 7585 OF 2004.

Bharat Niwas Coop.Housing Society
Limited. .... Petitioners.

versu.

Pandurang Gopal Dongare
(since deceased through HLRs)
and others. .... Respondents.

Shri V.B.Naik for the Petitioners.

Shri G.S.Godbole for the Respondents Nos.1 & 2.

CORAM : ABHAY S.OKA, J.

DATED : 9th December, 2004.

P.C.:

1. Heard Shri Naik for the Petitioners. By this petition under Article 227 of the Constitution of India, the Petitioners challenge the order dated 6th May 2004 passed by the learned Member of the Maharashtra State Cooperative Appellate Court, Mumbai Bench. The Respondents Nos.1A is the legal representative of the original Disputant No.1 before the Cooperative Court. The Respondent No.2 is the original Disputant No.2. The dispute is pending before the Cooperative Court. Against the interim order made in the dispute, the original Disputants preferred an appeal before the Appellate Court. During the pendency of the Appeal on 19th December 2002, the original Disputant No.1 Pandurang Gopal Dongare expired. Therefore, an Application was made by the Petitioners for dismissal of the Appeal as

the legal representatives of the original Defendant No.1 were not brought on record within the stipulated period of limitation. An application was filed on behalf of the legal representatives of the deceased Disputant No.1 for condonation of delay and for bringing them on record. The affidavit-in-support was filed by the Respondent No.2 who is the Disputant No.2. By the impugned order, the application for condonation of delay in bringing the legal representatives on record has been allowed and consequently the application made by the Petitioners for dismissal of the appeal has been rejected.

2. Shri Naik, the learned Counsel appearing for the Petitioners submitted that the Power of Attorney executed by the original Disputant No.1 in favour of the Respondent No.2 (original Disputant No.2) stood revoked on the demise of the original Disputant No.1 and therefore, he could not have filed the application for condonation of delay and for bringing the legal representatives on record.

3. I find that the said Application for condonation of delay in bringing the legal representatives on record is filed by the legal representatives of the Disputant No.1 and is signed by the Advocate for the legal representatives of the Disputant No.1. The affidavit-in-support appears to have been filed by the Respondent No.2. The Respondent No.2 is also a

Disputant. The Respondent No.2 was also Disputant No.2 and as the Disputant No.2, he was entitled to file affidavit in support of the application for condonation of delay and application for bringing on record the legal representatives of the deceased. Therefore, there is no substance in the said submission.

4. By the impugned order, delay in filing the aforesaid application for bringing the legal representatives of the deceased Disputant No.1 on record has been condoned and the legal representatives are ordered to be brought on record. There is no failure of justice. Hence this petition under Article 227 of the Constitution of India is rejected with no order as to costs.

5. Parties and the concerned Court to act on the authenticated copy of this order.

Judge.